

UNITED STATES TAX COURT
WASHINGTON, DC 20217

EMMANUEL A. SANTOS,)	
)	SD
Petitioner)	
)	
v.)	Docket No. 5864-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

The parties (Santos, the petitioner; and the IRS, the respondent) have each submitted computations under Rule 155.¹ They have also submitted written arguments about the correctness of their computations. Santos contends that the IRS's computation is defective because it assumes that Santos is not entitled to a \$2,994 deduction under section 162(l)(1). We reject Santos' contention. We therefore use the IRS's computation to decide the case.

1. Discussion

Santos timely filed his federal-income-tax return for 2010 on a Form 1040.

On the return he reported a medical-and-dental-expense deduction of \$2,994 on line 1 of the Schedule A. This is the line ordinarily used for claiming a deduction under section 213(a).² See Bedrosian v. Commissioner, 144 T.C. 152, 158 (2015). Section 213(a) allows a deduction for "expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer * * * to the extent that such expenses exceed 10 percent of adjusted gross income."

¹All references to Rules are to the Tax Court Rules of Practice and Procedure.

²All references to sections are to the Internal Revenue Code of 1986, as amended.

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Santos also attached a Schedule C to his return. Schedule C is the schedule for reporting income and expenses from the taxpayer's business, including business expenses deductible under section 162. Section 162(l)(1) allows a deduction under section 162 for self-employed taxpayers for "the amount paid during the taxable year for insurance which constitutes medical care for * * * the taxpayer." Section 162(l)(2)(A) imposes a limit on the deduction under section 162(l)(1) equal to the taxpayer's earned income from the business with respect to which the plan providing the medical-care coverage is established. Section 162(l)(3) provides that: "Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to a taxpayer as a deduction under section 213(a)." Based on the description of the deduction line items in Santos' Schedule C, it is apparent that the schedule does not reflect any claim for a deduction under section 162(l)(1). Other types of deductions were reported on the Schedule C, as was gross receipts. The net profit (i.e., gross receipts minus deductions) reported on Santos's Schedule C was \$4,974.

The IRS sent Santos a notice of deficiency for the 2010 tax year. In the notice of deficiency, the IRS's noncomputational adjustments (i.e., adjustments other than those that result entirely from other adjustments) all consisted of adjustments to deduction line items on the Schedule C. The noncomputational adjustments are summarized in the table below:

<u>Noncomputational adjustments in the notice of deficiency</u>			
<u>Schedule C line item</u>	<u>Amount reported on Schedule C</u>	<u>As adjusted in the notice of deficiency</u>	<u>As agreed to by the parties at trial</u>
Laundry and cleaning	\$119	\$0	\$0
Licenses and permits	3,603	2,850	3,150
Dues and subscriptions	8,755	7,381	8,627
Law school tuition and fees	20,275	-0-	Not agreed

The notice of deficiency did not disallow the \$2,994 deduction that Santos claimed under section 213(a). No adjustment was made in the notice of deficiency allowing Santos a deduction under section 162(l)(1).

Santos filed a petition for review of the notice of deficiency. In his petition, Santos challenged the IRS's disallowance of deductions for "law school expenses" and "real estate related expenses." In the petition, Santos did not assert that he was entitled to a deduction under section 162(l)(1).

At trial the parties agreed to resolve all of the noncomputational adjustments made in the notice of deficiency except for the \$ 20,275 adjustment to law school tuition and fees. The table above lists all of the noncomputational adjustments in the notice of deficiency and summarizes the parties' agreement with respect to them.

At trial, Santos admitted that the only issue to be resolved by the Court was whether he was entitled to deduct \$20,275 in law school tuition and fees. He disputed none of the other adjustments in the notice of deficiency. Nor did he assert his entitlement to a deduction under section 162(l)(1). He presented no evidence, documentary or testimonial, regarding his entitlement to such a deduction.

In his post-trial briefs, consistent with his position at trial, Santos contended only that he was entitled to deduct \$20,275 in law school tuition and fees. The briefs mentioned no other deductions. They did not mention his entitlement to a deduction under section 162(l)(1).

In May 2016, the Court issued an opinion holding that Santos was not entitled to deduct \$20,275 of law school tuition and fees. Santos v. Commissioner, T.C. Memo. 2016-100, at 4. The opinion directed that a decision would be entered under Rule 155. Id. at 10.

On July 26, 2016, Santos submitted a computation to the Court under Rule 155. The computation was unsigned. He later filed a signed computation on August 9, 2016. Under his computation, Santos would have a deficiency of \$2,781. The computation assumed that he had a \$2,994 deduction under section 162(l)(1) for self-employment health insurance. Apparently the computation assumed no deduction under section 213(a).

On August 2, 2016, the IRS filed a computation under Rule 155. Under this computation, Santos would have a deficiency of \$3,204. This computation assumed, as did the notice of deficiency, that Santos was entitled to the Schedule A deductions he claimed on his return (before accounting for computational changes to the deductions due to statutory limits.) Thus, under the IRS's computation,

Santos was entitled to \$2,994 deduction under section 213(a). The computation did not mention or allow for a deduction under section 162(l)(1).

Santos objects to the IRS's computation because it does not allow a \$2,994 deduction under section 162(l)(1). Santos argues that during the 2012 audit of his return, the IRS's revenue agent determined that he was entitled to a \$2,994 deduction under section 162(l)(1). Santos contends that he and the revenue agent made a "mutual mistake" in not including his entitlement to the deduction in the "original computation", by which he presumably means the notice of deficiency. In addition, Santos claims that he could not have taken the \$2,994 deduction under section 162(l)(1) on his original return because he was barred from doing so by the income limitation of section 162(l)(2)(A). It was only after his Schedule C deductions were disallowed during the course of this litigation, Santos says, was he able to claim a deduction under section 162(l)(1) free of the income limitation of section 162(l)(2)(A).

Rule 155(a) provides that: "Where the Court has filed or stated its opinion * * *, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount to be included in the decision."

Rule 155(c) provides:

Any argument under this Rule will be confined strictly to consideration of the correct computation of the amount to be included in the decision resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

In the course of this litigation, Santos' request for a \$2,994 deduction under section 162(l)(1) was raised for the first time in his Rule 155 computation. On his return Santos had claimed a \$2,994 deduction under section 213(a), not section 162(l)(1). Contrary to Santos' argument, the income limitation of section 162(l)(2)(A) did not block him from claiming a section 162(l)(1) deduction, at least according to his Schedule C, which reported income of \$4,974. The notice of deficiency, which is the initial formulation of the IRS's position with respect to the return, did not disallow the deduction under section 213(a) or allow a deduction under section 162(l)(1). If the revenue agent determined that Santos was entitled

to a deduction under section 162(l)(1), this determination did not make its way into the notice of deficiency. Nor was any such determination memorialized in a closing agreement, which is the type of agreement which binds the IRS. See sec. 7121(a) and (b); see also sec. 7701(a)(11)(B). In challenging the notice of deficiency, Santos was required to plead his right to such a deduction. See Rule 34(b)(4). He did not. At trial, he introduced no evidence that he was entitled to such a deduction. Thus, the record does not support his entitlement to the deduction.³ His brief did not address the deduction. In the course of this litigation, counsel for the IRS never agreed that Santos was entitled to a deduction. Nowhere in our Opinion did we express the view that Santos was entitled to a \$2,994 deduction under section 162(l)(1).

Santos' entitlement to a section 162(l)(1) deduction is a new issue that he is attempting to raise after trial. New issues cannot be raised in a Rule 155 proceeding. Cloes v. Commissioner, 79 T.C. 933, 935 (1982).

Santos' computation of the deficiency, allowing for a \$2,994 deduction under section 162(l)(1), does not reflect the "Court's determination of the issues." See Rule 155(a). Nor does it not show "the correct amount to be included in the decision." See id. The correct amount of the deficiency is found in the IRS's August 2, 2016 computation.

2. Conclusion

Pursuant to the opinion of this Court filed May 17, 2016, and incorporating the facts recited in respondent's August 2, 2016 computation as findings of the Court, it is

³He did not prove entitlement to his section 213(a) deduction either. Nor was it necessary for him to do so, because the IRS did not challenge his section 213(a) deduction. The IRS did not affirmatively stipulate to Santos' entitlement to a section 213(a) deduction, choosing simply to leave it unchallenged, but even if it had so stipulated, this would not have been the same as stipulating that Santos was entitled to a section 162(l)(1) deduction. Section 162(l)(1) has two requirements that section 213(a) does not: First, the payments must be for health insurance, and second, the taxpayer must not be eligible to participate in a subsidized health plan.

ORDERED AND DECIDED: That there is a deficiency in income tax due from petitioner in the amount of \$3,204.00 for the taxable year 2010, and that there is an overpayment for the taxable year 2010 in the amount of \$219.00, which amount was paid on November 15, 2012, and for which amount a claim for refund could have been filed, under the provisions of I.R.C. § 6511(b)(2), on December 11, 2013, the date of the mailing of the notice of deficiency.

(Signed) Richard T. Morrison
Judge

ENTERED: **MAR 06 2017**